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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 7023

COMPLAINT FILED: Mar. 15, 2016

DATE OF NOTIFICATION: Mar. 21, 2016

DATE OF LAST RESPONSE: May 5, 2016

ACTIVATED: June 8, 2016

ELECTION CYCLE: 2016

Earliest SOL: Feb. 25, 2021

Latest SOL: Mar. 13, 2021

COMPLAINANT:

Roskam for Congress

RESPONDENTS:

Kinzler for Congress and Raj P. Thakral in his
official capacity as treasurer¹
Illinois Families First and Kristin Kolehouse in her
official capacity as treasurer
Illinois Family Action

RELEVANT STATUTES

52 U.S.C. § 30104(b), (g)

52 U.S.C. § 30116(a), (f)

AND REGULATIONS:

52 U.S.C. § 30120(a)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.4(c)

11 C.F.R. § 109.20

11 C.F.R. § 109.21

11 C.F.R. § 109.23

11 C.F.R. § 110.11(b)

11 C.F.R. § 110.11(c)(4)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ During the relevant time period, candidate Gordon Kinzler served as treasurer for the Kinzler for Congress committee. Raj P. Thakral became treasurer for the committee in December 2015. See Kinzler for Congress, Amended Statement of Organization (Dec. 4, 2015).

I. INTRODUCTION

The Complaint makes numerous allegations that Respondents Kinzler for Congress and Raj P. Thakral in his official capacity as treasurer ("Kinzler Committee" or "Committee"), Illinois Families First and Kristin Kolehouse in her official capacity as treasurer ("IFF"), and Illinois Family Action ("IFA") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), during the 2016 Republican primary election campaign. First, the Complaint alleges that IFF and the Kinzler Committee each sponsored radio advertisements that failed to include proper disclaimers. Second, the Complaint alleges that IFF failed to properly report its donors, independent expenditures, and certain shared office expenses. Finally, the Complaint alleges that the Kinzler Committee received impermissible in-kind contributions from IFF and IFA as a result of coordinated and republished communications.

IFF states that it has revised the inadequate disclaimers but denies the reporting allegations.² In addition, IFF, the Kinzler Committee, and IFA all deny having coordinated any communications with each other.³

As discussed further below, the available information does not indicate that the Commission should pursue any of these allegations. Consequently, we recommend that the Commission: (1) dismiss the allegations that IFF and the Kinzler Committee failed to comply with the disclaimer requirements of the Act at 52 U.S.C. § 30120(a) and Commission regulations at 11 C.F.R. § 110.11, but send caution letters to these respondents; (2) find no reason to believe that IFF failed to disclose donors in violation of 52 U.S.C. § 30104(b)(3); (3) find no reason to believe that IFF violated 52 U.S.C. § 30104(g)(1)(B) by failing to file an additional 24-Hour

² IFF Resp. at 4-7 (May 5, 2016).

³ Kinzler Committee Resp. at 1-3 (Mar. 30, 2016); IFF Resp. at 8-9; IFA Resp. at 1 (Apr. 21, 2016).

1 report of independent expenditures; (4) dismiss the allegation that IFF failed to properly report
2 its operating expenditures in violation of 52 U.S.C. § 30104(b)(6)(B) and 11 C.F.R.
3 § 104.3(b)(1)(i), but send a caution letter; (5) find no reason to believe that IFF violated
4 52 U.S.C. § 30116(a) by making excessive contributions to the Kinzler Committee in the form of
5 a coordinated communication; (6) find no reason to believe that the Kinzler Committee accepted
6 impermissible contributions in violation of 52 U.S.C. § 30116(f); and (7) dismiss the allegation
7 that IFA violated 52 U.S.C. § 30118(a) by disseminating a non-public YouTube video via
8 Twitter.⁴

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. Respondents

11 Gordon (Jay) Kinzler was a candidate for the 6th Congressional District of Illinois; the
12 Kinzler Committee served as his authorized campaign committee.⁵ On March 15, 2016, Kinzler
13 lost the Republican primary election.⁶

14 IFF registered as an Independent-Expenditure-Only Committee with the Commission on
15 February 23, 2016.⁷ On February 25, 2016, IFF filed a 24-Hour Report indicating that it had
16 made an independent expenditure totaling \$32,500 for an “advertising buy” to support the

⁴ The Complaint also alleges that the Committee violated a directive issued by the Department of Defense (“DOD”) governing the political activities of members of the military. Compl. at 6. We do not address this allegation in the report because violations of DOD-issued directives are outside the Commission’s jurisdiction.

⁵ See Gordon “Jay” Kinzler, Statement of Candidacy (Oct. 19, 2015); Kinzler for Congress, Statement of Organization (Oct. 19, 2015).

⁶ See Illinois State Board of Election, Election Results, General Primary – 3/15/2016, <https://www.elections.il.gov/ElectionResults.aspx?ID=SKR13%2f24Geo%3d>.

⁷ See IFF, Statement of Organization; Miscellaneous Text at 5 (Feb. 23, 2016).

1 election of Jay Kinzler.⁸ IFF reported no other expenditures supporting Kinzler, and according
2 to IFF's 2016 July Quarterly Report, IFF received no contributions and spent only \$865.17 on
3 consulting fees from April 1, 2016, through June 30, 2016.⁹

4 Publicly available information indicates that Illinois Family Action ("IFA") is an
5 organization established under section 501(c)(4) of the Internal Revenue Code that provides
6 political advocacy and lobbying services to the Illinois Family Institute, a non-profit ministry.¹⁰
7 On February 26, 2016, IFA's Board of Directors endorsed Kinzler in the Republican primary
8 election.¹¹

9 **B. IFF and the Kinzler Committee Failed to Include Adequate Disclaimers on**
10 **Radio Advertisements**

11
12 The Complaint alleges that both IFF and the Kinzler Committee included inadequate
13 disclaimers in certain radio advertisements in violation of the Act and Commission regulations.
14 Under the Act, all public communications made by a political committee must include a
15 disclaimer.¹² A public communication includes a communication "by means of any broadcast,"
16 such as a radio advertisement.¹³

⁸ See IFF, 24-Hour Report of Independent Expenditures (Feb. 25, 2016). IFF's 2016 April Quarterly Report indicates that IFF raised \$78,000 and disbursed \$76,900 during the 2016 primary election period. IFF 2016 April Quarterly Report (Apr. 6, 2016).

⁹ IFF, 2016 July Quarterly Report at 3, 5-6 (July 9, 2016).

¹⁰ See IFA Homepage, <https://illinoisfamilyaction.org/>. IFA, which is not registered with the Commission as a political committee, filed an FEC Form 5, Report of Independent Expenditures Made and Contributions Received on March 4, 2016, disclosing \$0 total contributions and \$0 expenditures. See IFA, FEC Form 5 (dated Mar. 4, 2016). The available information indicates that IFA has never made an independent expenditure.

¹¹ See IFA Homepage, *IFA-Pac Endorses Jay Kinzler in 6th District GOP Congressional Race*, <https://illinoisfamilyaction.org/2016/02/ifa-pac-endorses-dr-jay-kinzler-in-the-6th-district-gop-congressional-race/>.

¹² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a).

¹³ See *id.* § 30101(22); *id.* § 100.26.

1 Communications authorized and paid for by a candidate, an authorized committee of a
2 candidate, or an agent of either, must clearly state that the communications were paid for by the
3 authorized political committee.¹⁴ A radio advertisement that is authorized or paid for by a
4 candidate or authorized committee must include an audio statement by the candidate stating that
5 he or she has approved the communication.¹⁵ Communications not authorized by a candidate, an
6 authorized committee, or an agent of the foregoing, are required to include a disclaimer
7 identifying the entity sponsoring the communication, by stating the full name and permanent
8 street address, telephone number, or World Wide Web address, and state the communication was
9 not authorized by any candidate or candidate's committee.¹⁶ Radio advertisements paid for by
10 other persons and not authorized by a candidate must include the following audio statement:
11 "[name of the political committee or other person paying for the communication] is responsible
12 for the content of this advertisement."¹⁷

13 IFF argues that both its legal counsel and the radio stations on which the advertisements
14 ran approved the advertisements and that IFF tried to remedy the errors.¹⁸ In addition, IFF
15 asserts that the disclaimers were sufficient to inform listeners that it had paid for the
16 advertisements.¹⁹ The Kinzler Committee did not respond to this allegation.

17 The record indicates that both IFF's and the Kinzler Committee's radio advertisements
18 were in technical violation of the disclaimer requirements. One of IFF's radio advertisements

¹⁴ *Id.* § 30120(a)(1); *id.* § 110.11(b)(1).

¹⁵ *Id.* at § 30120(d)(1)(A); *id.* § 110.11(c)(3)(i).

¹⁶ *Id.* § 30120(a)(3); *id.* § 110.11(b)(3).

¹⁷ *Id.* § 30120(d)(2); *id.* § 110.11(c)(4)(i).

¹⁸ IFF Resp. at 4-5

¹⁹ *Id.*

1 failed to include IFF's street address, telephone number, or Internet address, and it also failed to
2 include an audio statement that "IFF is responsible for the content of this advertising."²⁰ IFF's
3 second radio advertisement also failed to include the statement that it was responsible for the
4 advertisement's content.²¹ The Kinzler Committee's radio advertisement did not contain the
5 required candidate approval statement.²²

6 Notwithstanding these deficiencies, the Commission has not pursued such disclaimer
7 violations in past matters where the disclaimer was incomplete but contained sufficient
8 information to indicate that the sponsor had authorized the communication.²³ Each of the three
9 advertisements in question provided such identifying information. Thus, we recommend that the
10 Commission dismiss as a matter of prosecutorial discretion the allegations that IFF violated
11 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R. § 110.11(b)(3) and (c)(4) and that the Kinzler
12 Committee violated 52 U.S.C. § 30120(a) and (d)(1)(A) and 11 C.F.R. § 110.11(b)(1) and
13 (c)(3)²⁴ but send appropriate cautionary letters regarding the Act's disclaimer requirements.²⁵

²⁰ Compl. at 1-2, Attach. at 1. The Complainant contends that it contacted the three radio stations about the inadequate disclaimer in IFF's radio advertisement, but despite some attempts to correct the error, the radio stations never aired the advertisement with a fully compliant disclaimer and ultimately removed the advertisement from the air on March 9, 2016. *Id.* at 2, Attach. at 2-5. The Complainant provided audio files for all the radio advertisements at issue in this matter.

²¹ *Id.* at 2.

²² *Id.* at 4, Attach. at 31. According to disclosure reports, the Committee disbursed \$3,030 to Cumulus Media/WLS Radio on March 5, 2016. *See* Kinzler Committee, 2016 April Quarterly Report at 30. The Committee disbursed a total of \$8,525 in connection with radio advertising during that reporting period. *Id.*

²³ *See* MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

²⁴ *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁵ *See, e.g.*, MUR 6683 (Fort Bend County Democratic Party) (dismissing violation and sending a caution letter where disclaimer was incomplete but contained some information identifying the payor); MUR 6633 (Republican Majority Campaign PAC) (same), MUR 6438 (Art Robinson for Congress) (same), and MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (reminding committee concerning the use of appropriate disclaimers).

C. Allegations that IFF Failed to Properly Report Its Activities

The Complaint alleges that IFF failed to comply with the Act's reporting requirements in a number of ways. First, the Complaint alleges that IFF failed to timely report the source of funding for its independent expenditures.²⁶ Second, the Complaint alleges that IFF failed to accurately report its activities to correct its radio advertisements, as described above.²⁷ Third, the Complaint alleges that IFF failed to report expenditures for use of office space, equipment, and staff that IFF may have shared with other political committees.²⁸

As an independent-expenditure-only political committee,²⁹ IFF may solicit and accept contributions from corporations, individuals, and other federal political committees in excess of the Act's limits but must comply with the Act's reporting requirements for political committees.³⁰ Under the Act, all political committees must timely and accurately report their contributions and expenditures, including independent expenditures.³¹ Furthermore, a political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report within 24 hours describing the expenditures.³²

²⁶ Compl. at 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ An independent expenditure is an expenditure for a communication "expressly advocating the election or defeat of a clearly identified candidate" "that is not made in concert or cooperation with, or at the request or suggestion of, such a candidate, the candidate's authorized committee, or their agents, or a political party or its agents." 52 U.S.C. 30101(17); 11 C.F.R. § 100.16(a).

³⁰ See *Speechnow.org v. FEC*, 599 F.3d 686, 697-98 (D.C. Circ. 2010); Advisory Op. 2010-11 (Commonsense Ten).

³¹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.4(a).

³² 52 U.S.C. § 30104(g)(1)(A).

1 1. ~~IFF Timely Disclosed its Contributors~~

2 The Complaint alleges that IFF evaded disclosing the sources of funding for the
3 communications shown on its 24-Hour Report of Independent Expenditures, filed on
4 February 25, 2016, because IFF disclosed no contributions on its 2016 Pre-Primary Report,
5 which covered the period of January 1, 2016, through February 24, 2016.³³ However, according
6 to IFF's 24-Hour Report, it did not make the disbursements until February 25, 2016, and the
7 advertisement supporting Kinzler did not air until March 3, 2016. Thus, IFF properly reported
8 its contributors on its 2016 April Quarterly Report, which covered February 25, 2016, through
9 March 31, 2016. The April Quarterly report disclosed that IFF received a \$76,000 contribution
10 from Richard Uihlein on February 25.³⁴ Consequently, we recommend that the Commission find
11 no reason to believe that IFF violated 52 U.S.C. § 30104(b)(3) by failing to report contributions
12 on its 2016 Pre-Primary Report.

13 2. ~~IFF Was Not Required to File Additional 24-Hour Independent~~
14 ~~Expenditure Reports Regarding its Radio Advertisements~~

15
16 The available information indicates that IFF may have incurred additional, reportable
17 expenses when revising the disclaimers in the radio advertisements described above. The audio
18 files provided by the Complainant indicate that the second of IFF's radio advertisements was
19 edited to include new content, including a revised disclaimer.³⁵ According to IFF's 2016 April
20 Quarterly Report (Schedule B), IFF disbursed a total of \$750 to a voice-over artist named Steve

³³ Compl. at 3.

³⁴ IFF, 2016 April Quarterly Report at 6 (Apr. 6, 2016). While IFF may have filed the 24-Hour Report early by filing it on the day that IFF paid for the advertisement rather than within 24 hours of when the radio advertisement aired, IFF did not violate Commission regulations by doing so.

³⁵ See Compl., Attach. at 6, 9.

1 McKenzie to provide "production services" on March 9, 2016, and March 10, 2016, which
2 appear to correspond to the dates on which IFF revised the radio advertisement.³⁶

3 Because the Act requires that a committee file an additional report every time it makes an
4 independent expenditure aggregating \$1,000, IFF was not required to file an additional 24-Hour
5 Report under Act for its \$750 expenditure.³⁷ Consequently, we recommend that the Commission
6 find no reason to believe that IFF violated 52 U.S.C. § 30104(g)(1)(B).

7 3. Reporting of Office-Related Expenses

8 The Complaint contends that IFF failed to report any expenditures relating to shared
9 office space, equipment, and staff even though publicly available information indicates that IFF
10 shares the same location and personnel with two other political committees, Family-PAC
11 Federal, a committee registered with the Commission, and Paul Caprio Family-PAC, a political
12 committee registered with the State of Illinois.³⁸ In its response, IFF states that there is no "FEC
13 requirement" to disclose shared expenses and that there was "no coordination" with either Paul
14 Caprio Family-PAC or Family-PAC Federal.³⁹ Further, IFF contends that no third party bore
15 any administrative costs relating to its independent expenditures supporting Kinzler.⁴⁰

³⁶ See IFF, 2016 April Quarterly Report at 8-9. See also Steve McKenzie Voice Bio, <https://www.voices.com/people/stevemckenzie>.

³⁷ See 52 U.S.C. § 30104(g)(1)(B). If the disbursements to McKenzie were related to IFF's radio advertisements in support of Kinzler, IFF should have amended its 24-Hour Report and the Schedule E of Form 3X to reflect any additional amounts disbursed for the purpose of making the independent expenditure in support of Kinzler. 11 C.F.R. § 104.18(f). The Commission does not make a finding with regard to this issue, given that the evidence linking the disbursements and these radio advertisements has not been confirmed and the amount that may be in violation (\$750) is *de minimis*.

³⁸ The Complaint relies solely upon Family-PAC Federal's receipt of approximately 20 Requests for Additional Information ("RAI") since 2000 to contend that IFF did not properly disclose its disbursements. Compl. at 3. Paul Caprio Family-PAC has been registered as a political committee with the Illinois Board of Elections since February of 1992. See Compl., Attach. at 28.

³⁹ IFF Resp. at 6.

⁴⁰ *Id.*

1 IFF's disclosure reports show no disbursements for any administrative expenses.
2 Although the Complaint provides no direct evidence showing any shared arrangement between
3 IFF and the other organizations, it appears unlikely that IFF generated no reportable office-
4 related expenses. The available information indicates that Caprio is involved in all three
5 organizations and that IFF, Family-PAC Federal, and Paul Caprio Family-PAC share a business
6 address with Paul Caprio & Associates in Chicago, Illinois.⁴¹ Further, IFF's disclosure reports
7 indicate that IFF engaged in some political activity – such as the radio advertisements at issue in
8 this matter – that would appear to require some office space or equipment. However, it appears
9 that IFF has engaged in only a modest amount of activity: it made two independent expenditures
10 totaling \$62,500 in March 2016 since its formation a month earlier,⁴² and its latest quarterly
11 report discloses virtually no activity and cash-on-hand of only \$243.83.⁴³ Thus, it does not
12 appear that it would be a prudent use of Commission resources to investigate this issue.
13 Therefore, we recommend that the Commission exercise its prosecutorial discretion and dismiss
14 the allegation that IFF violated 52 U.S.C. § 30104(b)(6)(B) and 11 C.F.R. § 104.3(b)(1)(i)
15 and (3) and issue a letter of caution.⁴⁴

⁴¹ Families First, Family-PAC Federal, and Paul Caprio Family-PAC operate out of Caprio's consulting firm located at Orleans Plaza, 414 N. Orleans Street, #320, Chicago, IL. See IFF Statement of Organization (Feb. 23, 2016); Family-PAC Federal Amended Statement of Organization (Oct. 13, 2011); Compl., Attach. at 28. In addition to sharing an office, the three organizations have other connections through Caprio. Caprio is the treasurer of Family-PAC Federal and has served as a consultant to the PAC, with disbursements totaling \$3,217.84 in 2015. Family-PAC Federal, 2015 Year-End Report at 7 (Jan. 31, 2016); July 31 Mid-Year Report at 12 (July 15, 2015). Family-PAC Federal also reported disbursements in 2015 to Kristin Kolehouse, IFF's treasurer, for unspecified consulting. *Id.* IFF reported a disbursement to Caprio for \$11,400 on March 30, 2016 for "consulting" and Caprio Family-PAC disbursed \$2,500 to Caprio on January 29, 2016. IFF, 2016 April Quarterly Report at 7; Caprio-Family PAC, Quarterly Report (1/1/2016-3/31/2016).

⁴² IFF, 2016 April Quarterly Report at 2.

⁴³ *Id.*

⁴⁴ See *Heckler*, 470 U.S. 821.

D. Allegations that the Kinzler Committee Received Impermissible In-Kind Contributions from IFF and IFA

The Complaint alleges that Kinzler for Congress received impermissible in-kind contributions from both IFF and IFA.⁴⁵ According to the Complaint, Kinzler unlawfully coordinated the production of a radio advertisement with IFF for the benefit of his candidacy.⁴⁶ The Complaint also asserts that IFA republished campaign materials of the Kinzler Committee.⁴⁷

1. Allegation that the Committee Coordinated with IFF

The Complaint alleges that the Kinzler Committee and IFF coordinated a radio advertisement supporting Kinzler when the Committee posted one of IFF's radio advertisements under its campaign logo on the Committee's Facebook page.⁴⁸ The undated Facebook post included a statement: "So Proud to Learn I have Just Received Another Endorsement From Illinois Families First. Click the Button Below to Hear the New Ad They are Running for Me, Then, Like and Share with Your Friends to Spread the Word!!"⁴⁹

Both respondents deny they coordinated to produce the advertisement. IFF states that it paid for and distributed the advertisement without the Kinzler Committee's knowledge.⁵⁰ The Kinzler Committee denies coordinating any communications and provides an affidavit signed by the candidate as support.⁵¹ Kinzler states that neither he nor his campaign staff met or communicated with representatives of IFF or have any "understandings – express or implied –

⁴⁵ Compl. at 4, 5.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.*

⁴⁸ *Id.* at 4-5.

⁴⁹ *Id.* at 4; Attach. at 29-30.

⁵⁰ IFF Resp. at 8-9.

⁵¹ Kinzler Committee Resp. at 1.

1 with IFF.”⁵² Kinzler states that he only learned about IFF’s radio advertisements from a sales
2 manager at Cumulus Media, which owns one of the radio stations airing IFF’s advertisements,
3 after the advertisements aired.⁵³ IFF’s response suggests that Kinzler may have learned about
4 the advertisement by hearing it on the radio but does not indicate he had any involvement in the
5 production or distribution of the advertisement.⁵⁴

6 Under the Act, communications that are paid for by a third party, but coordinated with a
7 candidate, are in-kind contributions to the candidate.⁵⁵ A communication is coordinated if:
8 (1) it is paid for by a person other than the candidate or candidate’s committee;⁵⁶ (2) it satisfies
9 one or more of the five content standards;⁵⁷ and (3) it satisfies one or more of the six conduct
10 standards.⁵⁸ All three prongs of this test must be satisfied.⁵⁹

11 The available information does not establish that the radio advertisement described above
12 constituted a coordinated communication. The payment prong is satisfied because there is no

⁵² Affidavit of Gordon Kinzler at 1 (Mar. 20, 2016) (“Kinzler Aff.”), Kinzler Committee Resp.

⁵³ Kinzler Aff. at 1. Emails attached to the Committee’s response indicate that, on March 9, 2016, Don Beradini, a sales manager at WLS-AM, forwarded a copy of IFF’s radio advertisement along with related email traffic to Marc Collura, the Committee’s communications director. *Id.*, Ex. 1. In turn, Collura forwarded this material to a number of other people, including Kinzler campaign manager Braden Goodgame. *Id.*, Ex. 2.

⁵⁴ IFF Resp. at 9 (“Why would he call us on the day the ads began running and ask if we had anything to do with ads he has heard criticizing Roskam.”).

⁵⁵ 52 U.S.C. § 30116(a)(7)(B).

⁵⁶ 11 C.F.R. § 109.21(a)(1).

⁵⁷ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer before the candidate’s primary election; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

⁵⁸ The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

⁵⁹ 11 C.F.R. § 109.21(a).

1 dispute that IFF paid for the advertisement, and the content prong is satisfied because the
2 advertisement constitutes a public communication expressly advocating the election of a federal
3 candidate. But there is insufficient information to establish that the conduct prong has been met.
4 The sole basis for the Complaint's assertion that Kinzler requested, suggested, or assented to the
5 radio advertisement is the Kinzler Committee's undated Facebook post linking to it. While that
6 post contains ambiguous wording that could be read to support the allegation: "Click the Button
7 Below to Hear the New Ad They are Running *for Me*" (emphasis added), both IFF and the
8 Kinzler Committee deny the allegation, and state that Kinzler learned of IFF's advertisements
9 after they began running.⁶⁰ Although it is not entirely clear how the Kinzler Committee learned
10 about the advertisement, the Committee provided Kinzler's sworn affidavit along with copies of
11 emails demonstrating that the campaign obtained copies of IFF's advertisements through a
12 representative of the radio station after the advertisements had first aired. Consequently, we
13 recommend that the Commission find no reason to believe that IFF violated
14 52 U.S.C. § 30116(a) by making, and the Kinzler Committee violated 52 U.S.C. § 30116(f) by
15 accepting, excessive in-kind contributions.

16 2. IFA's Distribution of the Kinzler Committee's Advertisement

17 The Complaint alleges that the IFA made a prohibited in-kind contribution to the Kinzler
18 Committee when IFA disseminated a non-public YouTube campaign video endorsement on
19 March 7, 2016 ("YouTube video") via Twitter.⁶¹ The YouTube video presents the founder of the

⁶⁰ IFF Resp. at 9; Kinzler Aff. at 1.

⁶¹ Compl. at 5-6, Attach. at 32.

1 West Suburban Patriots, Carol Davis, giving a personal endorsement of Kinzler's candidacy.⁶²
2 According to the Complaint, the Committee uploaded this video endorsement to its "non-public"
3 YouTube channel on March 7, 2016.⁶³ Based on IFA's Twitter source code, the Complaint
4 asserts that IFA tweeted the link to the video five minutes after the campaign uploaded the
5 content and nearly 24 hours before the campaign posted it on its public YouTube channel.⁶⁴ The
6 screenshot of IFA's tweet includes the statement posted on the Committee's YouTube channel
7 exhorting viewers to vote for Kinzler on March 15, 2016.⁶⁵ The Complaint argues that the only
8 way that IFA could have obtained the non-public communication was directly from the Kinzler
9 campaign.⁶⁶ The Complaint further argues that IFA must have expended some resources in the
10 form of staff time, office space, and equipment to disseminate the video and thus made an in-
11 kind contribution to the Kinzler campaign.⁶⁷

12 Respondents deny cooperating to distribute the YouTube Video.⁶⁸ According to Kinzler,
13 the campaign notified its supporters on social media once the video was complete and made
14 public on YouTube.⁶⁹ Kinzler also denies having any interactions with IFA apart from pre-
15 endorsement interviews and questionnaires, and states in his affidavit that "the campaign alone

⁶² The screenshot provided by the Complaint indicates that on March 7, 2016, the Kinzler Committee uploaded the YouTube video, which included the endorsement as well as the statement: "Gordon 'Jay' Kinzler is the Best Choice to Represent the People of the 6th Congressional District of Illinois. Please Vote for Gordon 'Jay' Kinzler for Congress on March 15, 2016." Compl. at 5, Attach. at 32. Neither the public nor the unlisted Kinzler for Congress YouTube channels are currently accessible. It is unclear when they were deleted or by whom.

⁶³ *Id.* at 5, Attach. at 32.

⁶⁴ *Id.* at 5-6, Attach. at 36, 38.

⁶⁵ *Id.* at 5; Attach. at 35.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6.

⁶⁸ Kinzler Committee Resp. at 2; Kinzler Aff. at 2; IFA Resp. at 1.

⁶⁹ Kinzler Aff. at 2.

1 paid for the production of the video” and “was solely responsible for the creation and content of
2 the video. . . .”⁷⁰ Besides a blanket denial that it did not coordinate with the Kinzler Committee,
3 IFA does not directly address how or when it obtained the YouTube video, but admits that it
4 endorsed Kinzler and used social media to promote him in the Republican primary election.⁷¹
5 Without elaboration, IFA admits that “some of these communications included the use of the
6 Committee’s logo.”⁷²

7 Under the Act, “the financing by any person of the dissemination, distribution, or
8 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
9 campaign materials prepared by the candidate, his campaign committees, or their authorized
10 agents shall be considered to be an expenditure.”⁷³ The republication of such campaign
11 materials is also “considered a contribution for the purposes of contribution limitations and
12 reporting responsibilities of the person making the expenditure,” because the person financing
13 the communication “has provided something of value to the candidate [or] authorized
14 committee.”⁷⁴ The candidate or authorized committee that prepared the materials, however, does
15 not receive a contribution unless the dissemination, distribution, or republication is coordinated
16 under the coordinated communication rules at 11 C.F.R. § 109.21.⁷⁵ Such republished campaign
17 materials are deemed coordinated if the candidate, authorized committee, or agents thereof

⁷⁰ *Id.*

⁷¹ IFA Resp. at 1.

⁷² *Id.*

⁷³ 52 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23.

⁷⁴ 11 C.F.R. § 109.23(a).

⁷⁵ *Id.*

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1 satisfies one of the three conduct standards at section 109.21(d)(1)-(3): (1) request or
2 suggestion; (2) material involvement; or (3) substantial discussion.⁷⁶

3 Even if IFA's tweeting of the link to the Committee's YouTube video could fall within
4 the scope of dissemination, distribution, or republication under the Act,⁷⁷ the costs associated
5 with the activity were likely *de minimis*. The video was in all likelihood downloaded at no
6 charge from the Committee's private YouTube channel, and the costs associated with the tweet
7 were likely little or nothing. Therefore, we recommend that the Commission exercise its
8 prosecutorial discretion and dismiss the allegation.⁷⁸

9 III. RECOMMENDATIONS

- 10 1. Dismiss the allegation that Illinois Families First and Kristin Kolehuse in her official
11 capacity as treasurer violated 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R.
12 § 110.11(b)(3) and (c)(4) and send a letter of caution.
- 13 2. Dismiss the allegation that Kinzler for Congress and Raj P. Thakral in his official
14 capacity as treasurer violated 52 U.S.C. § 30120(a) and (d)(1)(A) and 11 C.F.R.
15 § 110.11(b)(1) and (c)(3) and send a letter of caution.
- 16 3. Find no reason to believe that Illinois Family First and Kristin Kolehuse in her official
17 capacity as treasurer violated 52 U.S.C. § 30104(b)(3) by failing to report contributions.
- 18 4. Find no reason to believe that Illinois Family First and Kristin Kolehuse in her official
19 capacity as treasurer violated 52 U.S.C. § 30104(g)(1)(B) by failing to file an additional
20 24-Hour report.

⁷⁶ *Id.* § 109.21(d)(6).

⁷⁷ See 11 C.F.R. §§ 100.94, 100.155 (an individual's personal, uncompensated internet activity does not result in a contribution or expenditure); Internet Communications, 71 Fed. Reg. 18,589, 18,604 (Apr. 12, 2006) (explanation and justification). In this instance, we do not have enough information regarding who was in charge of IFA's twitter feed, *i.e.* whether it was a volunteer, and thus cannot state whether IFA's tweet would qualify as uncompensated internet activity.

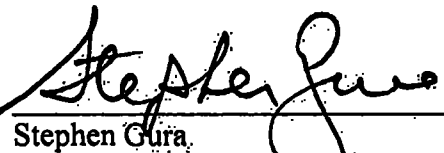
⁷⁸ See *Heckler*, 470 U.S. 821. See also MUR 6840 (All Citizens for Mississippi) (dismissal of republication allegation based on *de minimis* value of inclusion of Senate candidate's photograph, taken from campaign website, into respondent's newspaper advertisement); MUR 5743 (Betty Sutton for Congress) (dismissed with admonishment republication allegation in which photograph of candidate obtained from publicly available website and inserted into respondent's publication would have *de minimis* value).

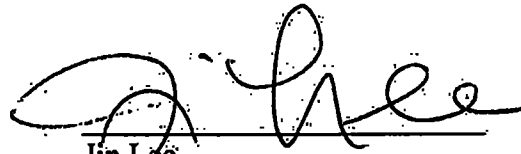
5. Dismiss the allegation that Illinois Families First and Kristin Kolehouse in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(6)(B) and 11 C.F.R. § 104.3(b)(1)(i) and (3) by failing to report operating expenditures and send a letter of caution.
6. Find no reason to believe that Illinois Families First and Kristin Kolehouse in her official capacity as treasurer violated 52 U.S.C. § 30116(a).
7. Find no reason to believe that Kinzler for Congress and Raj P. Thakral in his official capacity as treasurer violated 52 U.S.C. § 30116(f).
8. Dismiss the allegation Illinois Family Action violated 52 U.S.C. § 30118(a).
9. Approve the attached Factual and Legal Analyses.
10. Approve the appropriate letters.
11. Close the file.

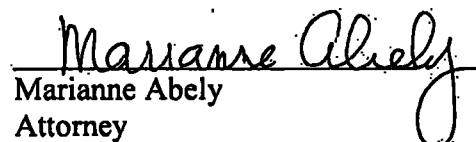
Lisa J. Stevenson
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10.6.16
Date


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